

NOT FOR PUBLICATION

JAN 24 2008

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

SWARAN SINGH,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 06-72924

Agency No. A75-252-493

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted January 14, 2008**

Before: HALL, O'SCANNLAIN, and PAEZ, Circuit Judges.

Swaran Singh, a native and citizen of India, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen removal proceedings. To the extent we have jurisdiction, it is under

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

8 U.S.C. § 1252. We review for an abuse of discretion, *see Maly v. Ashcroft*, 381 F.3d 942, 945 (9th Cir. 2004), and we deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Singh's motion to reopen as untimely because it was filed more than ninety days after the BIA's March 1, 2004 order. *See* 8 C.F.R. § 1003.2(c)(2). Singh did not provide sufficient evidence to establish that conditions in India have changed so that he now has a well-founded fear of future persecution. *See* 8 C.F.R. § 1003.2(c)(3)(ii); *see also Maly*, 381 F.3d at 945. Singh's reliance on *Franco-Rosendo v. Gonzales*, 454 F.3d 965 (9th Cir. 2006) is unavailing.

We lack jurisdiction to review the BIA's decision not to exercise its sua sponte authority. *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002).

PETITION FOR REVIEW DENIED in part and DISMISSED in part.